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4 STEVEN ERIC GOULD,
5 Plaintiff,
6 v.
7 LAURIE MARINO, et al.,
8 Defendants.
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12 Case No. [19-cv-00015-HSG](#)
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**ORDER DENYING REQUEST FOR
DEFAULT JUDGMENT AND
JUDICIAL NOTICE; ORDER TO
SHOW CAUSE WHY THE COURT
SHOULD NOT ENTER DEFAULT
AGAINST ABC VENTURES LLC**

15 Re: Dkt. No. 34
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19 Plaintiff filed this *pro se* action pursuant to 42 U.S.C. § 1983 regarding constitutional
20 violations that occurred at Correctional Training Facility (“CTF”) in Soledad, California, where he
21 was previously housed. Now pending before the Court is plaintiff’s request for judicial notice and
22 for entry of default judgment Dkt. No. 34.

DISCUSSION

23 **I. Request for Judicial Notice and for Entry of Default Judgment**

24 Plaintiff has requested that the Court take judicial notice of “the facts presented” in his
25 motion and “the undisputable fact that Defendant(s) ABC Ventures LLC and owner Adam B.
26 Clingerman are in default.” Dkt. No. 34 at 7. Plaintiff’s request is DENIED. Federal Rule of
Evidence 201(b) permits a court to notice an adjudicative fact if it is “not subject to reasonable
dispute.” *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 999 (9th Cir. 2018). “A fact is not
subject to reasonable dispute if it is generally known, or can be accurately and readily determined
from sources whose accuracy cannot reasonably be questioned.” *Id.* (quoting Fed. R. Evid.
201(b)(1)-(2)) (internal quotation marks omitted). Plaintiff’s motion relies on numerous assertions
and plaintiff has not demonstrated that these assertions are not subject to reasonable dispute.

1 Determinations as to whether a defendant has been served, is in default, or owes a sum certain are
2 legal determinations, and not properly the subject of judicial notice.

3 Plaintiff also requests that the Court enter default judgment against ABC Ventures LLC
4 and in favor of plaintiff in the amount of \$1.2 million. Plaintiff's request is DENIED. A default
5 judgment may only be entered against a defendant who has defaulted. Fed. R. Civ. P. 55(b).
6 Here, an entry of default has not yet been entered against defendant ABC Ventures LLC.

7 **II. Ordering ABC Ventures LLC to Show Cause Why Default Should Not Be Entered**

8 Attached as Exhibit A to plaintiff's request is defendant ABC Ventures' waiver of reply
9 and demand for jury trial. Dkt. No. 34 at 12-16. The waiver of reply is dated November 15, 2019,
10 and the proof of service states that it was mailed that same day to plaintiff and to counsel for
11 defendants Tucker, Koenig, Maurino and Kernan. Dkt. No. 34 at 16. This waiver of reply and
12 demand for jury trial was not filed with the Court. It appears from this waiver of reply and
13 demand for jury trial that defendant ABC Ventures LLC was properly served but has failed to
14 defend itself in this suit. Pursuant to Fed. R. Civ. P. 55(a), “[w]hen a party against whom a
15 judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is
16 shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a).
17 Within **twenty-eight (28) days** of the date of this order, defendant ABC Ventures LLC is ordered
18 to show cause why the Court should not enter default against ABC Ventures LLC for failure to
19 defend pursuant to Fed. R. Civ. P. 55(a)f.

20 **CONCLUSION**

21 For the reasons set forth above, the Court orders as follows.

22 1. Plaintiff's request for judicial notice and for entry of default judgment in the
23 amount of \$1.2 million against defendant ABC Ventures LLC (Dkt. No. 34) is DENIED.

24 2. Within **twenty-eight (28) days** of the date of this order, defendant ABC Ventures
25 LLC is ordered to show cause why the Court should not enter default against ABC Ventures LLC
26 for failure to defend pursuant to Fed. R. Civ. P. 55(a). The Clerk shall send copies of this order to
27 ABC Ventures LLC, c/o Owner, Adam B. Clingerman, 2411 Old Crow Canyon Rd., Suite 170,
28 San Ramon CA 94583, and to Anthony C. Deichler, Law Offices of Anthony C. Deichler, 2411

1 Old Crow Canyon Rd., Suite 170, San Ramon CA 94583.

2 This order terminates Dkt. No. 34.

3 **IT IS SO ORDERED.**

4 Dated: 9/28/2020

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6 HAYWOOD S. GILLIAM, JR.
7 United States District Judge

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United States District Court
Northern District of California